

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MICHAEL HOLTSINGER,
Plaintiff,

v.

TANYA VOROS,
Defendant.

No. 2:03-cv-00732-MCE-CMK

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

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Plaintiff, a state prisoner, brings this civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff alleges he was denied medical treatment by Defendant Voros following an assault by at least four other inmates. As a result of that assault, Plaintiff claims he sustained injuries and was exposed to the blood of another inmate.

Following Defendant Voros' failure to appear for her deposition, fact establishing sanctions were issued finding liability on her part for deliberate indifference towards Plaintiff's serious medical needs. The only issue remaining for trial are the damages, if any, owed to Plaintiff.

1 Plaintiff seeks both compensatory and punitive damages for Eighth
2 Amendment violations pursuant to 42 U.S.C. § 1983, as well as
3 reasonable attorney's fees pursuant to 42 U.S.C. § 1988.

4 The matter came on for court trial on March 15, 2010,
5 against Defendant Tanya Voros, only inasmuch as Plaintiff had
6 previously dismissed his claims against other Defendants. Carter
7 C. White, Supervising Attorney, Victoria Baiza, Certified Law
8 Student, and Christina Ahn, Certified Law Student, appeared on
9 behalf of Plaintiff. No appearance was made on behalf of
10 Defendant Tanya Voros.

11 After hearing the evidence and arguments, the Court makes
12 the following Findings of Fact and Conclusions of Law.

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14 **FINDINGS OF FACT**
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16 The following facts were deemed established and found to
17 constitute deliberate indifference on the part of Defendant Voros
18 as a discovery sanction for failure to appear at her deposition:

- 19 a. On June 22, 2002, Defendant was on duty as a
20 Medical Technical Assistant at High Desert State
Prison, Susanville, California.
- 21 b. In Defendant's working capacity, she was
22 responsible for the health care needs of inmates
23 who received injuries in Administrative
Segregation, referral of inmates to the emergency
24 room, sick call rounds in the housing unit,
dispensing of medication, collection of medical
25 care request forms, and decontamination of inmates
exposed to blood and basic inmate care needs.
- 26 c. At all times relevant to the events described
herein, Defendant acted under color of state law.
- 27 d. At all times relevant, Plaintiff was incarcerated
28 at High Desert State Prison, Susanville,
California.

- e. At all times relevant, Plaintiff's cellmate, Paul Magnan, was incarcerated at High Desert State Prison, Susanville, California.
- f. On June 22, 2002, at approximately 1300 hours, after entering the exercise yard, Plaintiff and Magnan were assaulted. Magnan was assaulted by two inmates resulting in his loss of consciousness and bleeding from the head. Plaintiff was simultaneously assaulted by four inmates resulting in bodily injury.
- g. Plaintiff was placed in a D7-B Section holding cage after being assaulted.
- h. Defendant approached Plaintiff while he was in the holding cage, at which time Defendant became aware of Plaintiff's injuries.
- i. Defendant was a responding staff member who saw that Plaintiff needed medical treatment.
- j. Defendant, producing only a 3" x 3" yellow "Post-It" pad, asked Plaintiff for his name and CDC number. Defendant stared at Plaintiff's injured face and asked who hit him.
- k. Defendant instructed Plaintiff to turn around and lift up his shirt. After Plaintiff struggled to lift up his shirt, he turned around and found that Defendant had left the vicinity and took no steps to provide Plaintiff medical care nor made contact with him thereafter regarding his injuries.
- l. On June 23, 2002, approximately 27 hours after Plaintiff was assaulted, Defendant failed to transfer Plaintiff to High Desert State Prison's Central Treatment Center.
- m. On June 29, 2002, Defendant came into contact with Plaintiff. While Defendant was at Plaintiff's cell door, he attempted to reiterate his medical needs to Defendant. Defendant responded, "The Doctor is aware of you two" (referring to Plaintiff and his cellmate) and walked away.
- n. On June 22, 23, 25, 2002, Plaintiff continued to contact medical technical assistants regarding his injuries and urgent need for medical treatment.
- o. Defendant's actions and inactions caused Plaintiff to be deprived of any medical examination for 59 days after the June 22, 2002 incident. Defendant's deliberate indifference to Plaintiff's serious medical needs caused this delay.

1 The only facts remaining for adjudication at trial concern
2 the amount of harm Plaintiff suffered as a result of Defendant's
3 deliberate indifference, and the amount of damages resulting
4 therefrom. In that regard, the Court finds as follows:

5 p. Immediately after the assault, Yard Gunner J.
6 Delgado ordered Plaintiff to drag Magnan off the
7 yard. Plaintiff complied with Yard Gunner
8 Delgado's orders but as Plaintiff dragged Magnan,
9 Plaintiff was bleeding from his legs and knees and
10 was exposed to Magnan's blood. As a result of
11 coming into contact with his cellmate's blood,
12 Plaintiff was fearful of being exposed to
13 Hepatitis C and HIV. Plaintiff testified that he
14 thought about it constantly in the beginning, but
15 as the months continued, he thought about it less
16 and less. Eventually, it was only a sporadic
17 thought.

18 q. Plaintiff testified he washed his wounds using a
19 milk carton. He filled it with water from the
20 sink and cleaned his injuries. He also resorted
21 to self-treatment such as scrubbing his knees with
22 a scrub pad.

23 r. Plaintiff also testified that he threw away his
24 boxers, shoes, and socks because they were covered
25 in blood. Plaintiff believed that it was the
26 blood of his cellmate.

27 s. Nurse Kismet A. Mayo testified that Defendant had
28 a duty to wash the blood off of Plaintiff and
disinfect any wounds. She also had a duty to
inquire as to the origin of the blood.

t. Plaintiff stated that on the first night, his pain
was a nine out of ten. He said his head felt like
it was on fire, he had pain in his legs, his mouth
was swollen, and he had trouble walking. In
addition, he stated that he went the first night
without any pain reliever.

u. Plaintiff testified that the week after the
incident, the pain dwindled to an eight out of ten
and by July 2002, the swelling had reduced.

v. Paul Magnan testified that as a result of his pain
after the incident, Plaintiff fell in the shower
and in the exercise yard.

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1 w. Plaintiff testified that he was tested for HIV and
2 Hepatitis C on July 25, 2002 and August 15, 2002.
3 He stated that he was tested again in February
2003, June 2003, and at the end of 2003. His
results came back negative.

4 x. Nurse Kismet A. Mayo testified that she conducted
5 the in-prison appeal for Plaintiff. She confirmed
6 that Defendant did not follow procedures. She
failed to fill out the proper documentation and
7 failed to get him the proper medical attention the
day of the incident.

8 y. Plaintiff claims he continued to be in pain in his
9 entire upper body, head, knee, neck, back,
shoulder, wrist, and elbow.

11 CONCLUSIONS OF LAW

12 A. Liability

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14 1. A prison official violates the Eighth Amendment only
15 when two requirements are met: (1) objectively, the official's
16 act or omission must be so serious such that it results in the
17 denial of the minimal civilized measure of life's necessities;
18 and (2) subjectively, the prison official must have acted
19 unnecessarily and wantonly for the purpose of inflicting harm.
20 See Farmer v. Brennan, 511 U.S. 825, 834 (1994). Thus, to
21 violate the Eighth Amendment, a prison official must have a
22 sufficiently culpable mind." See id. Here, Defendant Voros was
23 previously found liable by the magistrate judge. The magistrate
24 judge found that Defendant Voros was deliberately indifferent to
25 Plaintiff's injury, giving rise to liability. See Estelle v.
26 Gamble, 429 U.S. 97, 105 (1976).

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2. Given this sanction imposed by the magistrate judge in regards to liability, this finding is akin to default. However, even upon entry of default, the complaint's factual allegations regarding liability are taken as true, but allegations regarding the amount of damages must be proven. Dundee Cement Co. v. Howard Pipe & Concrete Prods., 722 F.2d 1319, 1323 (7th Cir. 1983) (citing Pope v. United States, 323 U.S. 1, 12 (1944) and Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir. 1977)). "The general rule of law is that upon default the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true." Geddes, 559 F.2d at 560. Thus, the Court must make an independent determination of the sum to be awarded.

3. Although the Court finds that Plaintiff has made a good faith effort to prove damages, the evidence presented at the hearing was insufficient to warrant entitlement of the \$25,000 in compensatory damages and the \$25,000 in punitive damages sought by Plaintiff. Instead, on the basis of the evidence offered at trial, the Court finds that Plaintiff is entitled to damages as follows:

B. Compensatory Damages

"Compensatory damages may include not only out-of-pocket loss and other monetary harms, but also such injuries as impairment of reputation..., personal humiliation, and mental anguish and suffering."

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1 Memphis Community School District v. Stachura, 477 U.S. 299, 307
2 (1986) (quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 350
3 (1974)) (internal quotations omitted). Mental and emotional
4 distress, including mental suffering and emotional anguish, is a
5 compensable injury. Carey v. Piphus, 435 U.S. 247, 264 & n. 20
6 (1978). "Although essentially subjective, genuine injury in this
7 respect may be evidenced by one's conduct and observed by
8 others." Id. at 264 & n. 20. Further, physical pain and
9 suffering may support an award of compensatory damages. Jackson
10 v. Crews, 873 F.2d 1105, 1109 (8th Cir. 1989)

11 Plaintiff alleges severe pain in his entire body, head,
12 knee, neck, back, shoulder, wrist, and elbow following the
13 June 22, 2002 injury. Plaintiff further alleges that the 59-day
14 delay in medical treatment exacerbated Plaintiff's injuries,
15 prolonged his pain and suffering, and caused him damages.

16 Despite his claims that his injuries were severe, Plaintiff
17 produced no corroborating evidence to support his own assertions
18 in that regard. There was no testimony with respect to a medical
19 diagnosis. The only evidence regarding the extent of his
20 injuries came from Plaintiff's own observations and the
21 observations of Plaintiff's cellmate. Nurse Kismet A. Mayo could
22 only state what a third party individual witnessed. Further, the
23 video submitted by Plaintiff documenting the fight shows a short
24 scuffle between Plaintiff and the other men in the yard in which
25 Plaintiff falls to his knees on two occasions. The video does
26 not show "severe injuries" warranting an award of \$25,000. The
27 Court finds that Plaintiff is entitled to \$500.00 in compensatory
28 damages.

1 **C. Punitive Damages**

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3 While compensatory damages are mandatory once liability is

4 found, punitive damages are discretionary. Smith v. Wade, 461

5 U.S. 30, 54 (1983). "The purpose of punitive damages is to

6 punish the defendant for his willful or malicious conduct and to

7 deter others from similar behavior." Memphis Community School

8 District, 477 U.S. at 306 n.9. "The focus, in determining the

9 propriety of punitive damages, is on the intent of the defendant

10 and whether the defendant's conduct is of the sort that calls for

11 deterrence and punishment over and above that provided by

12 compensatory awards." Coleman v. Rahija, 114 F.3d 778, 787 (8th

13 Cir. 1997) (citing Smith, 461 U.S. at 54). Punitive damages are

14 appropriate "when the defendant's conduct is shown to be

15 motivated by evil motive or intent, or when it involves reckless

16 or callous indifference to the federally protected rights of

17 others." Smith, 461 U.S. at 56. "A finding of deliberate

18 indifference to a serious medical need, while establishing

19 liability under § 1983, does not necessitate a finding of callous

20 indifference warranting punitive damages." Coleman, 114 F.3d at

21 787.

22 In this matter, punitive damages are not appropriate.

23 Plaintiff failed to make the requisite showing of callous

24 indifference. The Plaintiff's own witness, Nurse Kismet A. Mayo,

25 stated that Defendant Voros' conduct did not exhibit such

26 indifference.

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1 In sum, this Court finds that judgment shall be entered in
2 favor of Plaintiff and against Defendant Voros. Damages shall be
3 awarded for violation of 42 U.S.C. § 1983, the sum of \$500.00 in
4 compensatory damages and \$0 in punitive damages.

5 Any request for attorney's fees by Plaintiff, as prevailing
6 party herein, shall be made pursuant to Local Rule 293.

7 IT IS SO ORDERED.

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9 Dated: March 26, 2010

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12 MORRISON C. ENGLAND, JR.
13 UNITED STATES DISTRICT JUDGE
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